


# Speak Up Culture – lessons for the Board

16 December 2022  Jacqui Atkinson

Whistleblowing and culture continue to be hot topics in healthcare and Trusts need to ensure that they are doing all they can to ensure that concerns are dealt with promptly and sensitively in order to minimise legal and regulatory risks.

The recent Supreme Court case of **Jhuti v Royal Mail Group** involved successful claims for whistleblowing, unfair dismissal and detriment, following which a significant award of compensation was made (the exact figure is still to be calculated but will run into hundreds of thousands of pounds possibly higher).

The tribunal found that the claimant had suffered a "lengthy and intense period of bullying" over five months prior to taking sick leave and being dismissed. This treatment had "destroyed the claimant's life", leaving her with PTSD and recurrent episodes of severe depression, and leading to the breakdown of her relationship with her teenage daughter. The medical evidence was that she would never work again due to the combined effects of her illness and the stigma of six years' unemployment since her dismissal.

The claimant was awarded loss of earnings to retirement at age 67 (circa 12 years losses), £55,000 general damages for psychiatric injury, £40,000 for injury to feelings and £12,500 aggravated damages to reflect the respondent's oppressive conduct at the remedies hearing. An uplift of 0.5% was also applied for unreasonable failure to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures.

Although this is a rare case on its facts, as it effectively involved a conspiracy by the employee's line manager to deliberately hide the real reason for the dismissal (whistleblowing) behind an invented reason (performance concerns) which the decision maker adopted, it highlights the importance of adequately investigating concerns and responding appropriately.

Promoting a speak up culture and taking concerns seriously also demonstrates a real commitment to dealing with important issues which cause stress to the staff involved. Therefore, by proactively dealing with these issues organisations can build trust and loyalty across their workforce. This in turn may positively impact absence and staff retention figures, which given the current climate as highlighted above will be of even more importance.

In light of the risks involved our 5 Key Takeaway points for all Boards are as follows:

- **Develop an 'Effective Speak up Culture'** - described by the new NGO for the NHS as 'A culture which allows workers to speak up about issues which prevent them from doing a great job, knowing they will be listened to, thanked and that appropriate action will be taken'.
- **Listen Up** - Listen with curiosity of **what** is being raised, rather than **who** is raising it.
- **Training for all levels** - Board level, middle managers and all staff so everyone understands what speak up and raising concerns is about, how they can do that and how the organisation should respond.
- **Investigations may need to happen** – a formal investigation involving serious or sensitive issues involving commissioning managers/Terms of Reference. Ensure you invest in the right resource for the process.
- **Be Collaborative, Supportive and Curious** - with your FTSUG's/Whistleblowing Champions, NED overseers, support the people in the role and show commitment to the culture of speaking up

# Contact



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